IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 81 OF 2005

Shri Nagesh Chandu Parwar,
resident of Raigini,
Bandora, Ponda, Goa ..... Petitioner.

V/s.

1. State of Goa, through its
Chief Secretary, having office at
Secretariat, Porvorim, Bardez, Goa.

2. State Election Commission,
having Office at
Junta House, Panaji, Goa. ..... Respondents.

Mr. Girish Sardessai, Advocate for the petitioner.

Mr. S.S. Kantak, Advocate General with Ms. T. Rane, Addl. Govt. Advocate for respondent No.1.

Mr. V.P. Thali, Advocate for respondent No.2.

CORAM : A.P. LAVANDE &
N.A. BRITTO, JJ.

Date of reserving the Order :
2nd March, 2005.

Date of pronouncing the Order :
9th March, 2005.

O R D E R : (Per LAVANDE, J.)

By this petition, the petitioner who claims to hail from the Scheduled Caste category, seeks the following reliefs :

> (a) This Hon'ble Court be pleased to issued a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direciton, directing the respondent No.1 to revoke/withdraw the impugned Notification dated 14.1.2005;
>
> (b) This Hon'ble Court be pleased to quash and set aside Notification dated 14.1.2005 declaring elections and Rule 10 (1) of Election Rules.

2. The petitioner has challenged the Notification dated 14.1.2005, issued by respondent No.1 notifying general elections to the North and South Goa Zilla Panchayats. The said Notification was published in the Official Gazette – (Extraordinary) dated 14.1.2005 fixing elections on 6.3.2005 which have been subsequently adjourned by another Notification to 13.3.2005.

3. Mr. Sardessai, learned Counsel appearing for the petitioner submitted that Rule 10 of the Goa Panchayat and Zilla Panchayat (Election Procedure) Rule, 1996 (hereinafter, referred to as "the Rules"), is ultra vires inasmuch as the Government has no jurisdiction to issue

the Notification fixing the date of elections to the two Zilla Panchayats. The learned Counsel relying upon Sections 15, 115-K , 125 and 127 of the Goa Panchayat Raj Act, 1994 (hereinafter, referred to as "the Act") submitted that the Government has no jurisdiction to issue the notification dated 14.1.2005. According to the learned Counsel, in view of Section 243-K of the Constitution of India, the Government has no jurisdiction to issue the impugned Notification.

4. Mr. Kantak, learned Advocate General appearing for respondent No.1, at the outset submitted that this Court should not interfere at the instance of the Petitioner on account of gross unexplained laches on the part of the petitioner inasmuch as the petition has been filed on 18.2.2005, challenging the Notification dated 14.1.2005, even after the election process has started on 14.2.2005. The learned Advocate General submitted that Rule 10 of the said Rules is not ultra vires and the Government is entitled to issue the impugned Notification in terms of Rule 10. The learned Advocate General submitted that Section 240 of the Act gives power to the Government to make Rules to carry out the purposes of the Act and the Government is entitled, in law, to frame Rules to give effect to the provisions of the Act. The learned Advocate General further submitted that having regard to Article 243K-(1) and (4) of the Constitution, it is clear that the State Election Commission has the superintendence and control of the preparation of electoral rolls for

the elections of Zilla Panchayats and the State Election Commission has to conduct the elections after the date is fixed by the Government. Relying upon Article 243-K, the learned Advocate General submitted that the Government is entitled to make law with respect to all matters relating to or in connection with the elections to the Panchayats.

5. Mr. Thali, learned Counsel appearing on behalf of respondent No.2 adopted the arguments made by the learned Advocate General.

6. We have considered the submissions made by the learned Advocates for the parties. Before dealing with the submissions made by the learned Counsel, it would be appropriate to reproduce Rule 10(1) of the said Rules, Section 240 of the Act and Article 243-K (1) and (4) of the Constitution of India. They are as follows :

> "10. *Power of the Government to appoint dates etc., for holding elections* – (1) The Government, in consultation with the Commissioner, or, shall, after it is decided to hold an election in the Village Panchayats or Zilla Panchayats concerned, by notification in the Form I or Form I-A as the case may be, appoint the date (s) for holding election thereof."

> "240. *Power of Government to make rules.* - (1) The Government may, subject to previous publication, by notification in the Official Gazette, make rules to

carry out the purposes of this Act.

(2) In making a rule under this section, the Government may provide that a person guilty of breach thereof shall, on conviction, be punished with fine which may extend to five hundred rupees and where the breach is continuing one with further fine which may extend to twenty-five rupees for every day on and after first day on which the breach continues."

"**243K Elections to the Panchayats –** The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Panchayats shall be vested in a State Election Commission consisting of a State Election Commissioner to be appointed by the Governor.

(2) .....

(3) .....

(4) Subject to the provisions of this Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the Panchayats."

7. Section 240 of the Act, clearly entitles the Government, subject to previous publication by Notification in the Official Gazette, to make Rules to carry out the purposes of the Act. Admittedly, the said Rules have been framed in exercise of the powers conferred by Sections 15,

Section 125(2), read with sub-Section (1) of Section 240 of the Act. Therefore, we are unable to accept the submission of learned Counsel appearing for the petitioner that the Government has no jurisdiction to frame Rule 10. The learned Counsel appearing for the petitioner has been unable to point out any provision either in the Act or in the Constitution of India which ousts the jurisdiction of the Government to frame rules, enabling the Government to fix the date for holding elections to the two Zilla Panchayats. The reliance placed by the learned Counsel appearing for the petitioner on Sections 15, 115-K, 125 and 127 of the Act in support of his submission that the Government has no jurisdiction to frame Rules, is totally misplaced. We are, therefore, unable to accept the submission of the learned Counsel for the petitioner that the Notification dated 14.1.2005, which has been issued by the Government, inter alia, fixing the date of elections to both the Zilla Panchayats is liable to be quashed and set aside. We also find considerable force in the submission of the learned Advocate General that the petitioner is guilty of gross unexplained laches inasmuch the petition has been filed almost after one month from the date of issuance of Notification dated 14.1.2005 and that too after the election process is set in motion on 14.2.2005. On this count also the petitioner is not entitled to the reliefs sought for.

8. In view of the above discussion, we are of the view that there is

no merit in the present petition and the same deserves to be dismissed in limine.

9. In the result, therefore, the petition is summarily rejected.

A.P. LAVANDE, J.

N.A. BRITTO, J.

ssm.